IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.640 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHASHAN SIZERS PVT LTD

Versus

G I I C LTD

Appearance:

MR SN SOPARKAR with MR TUSHAR P HEMANI for Petitioner No.1

MR HS MUNSHAW for Respondent No. 1

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 28/06/2002

ORAL JUDGEMENT

Rule. Mr.H.S.Munshaw, learned advocate waives service of rule on behalf of the respondent.

2. The petitioner, a Private Limited Company availed of term loan of Rs.50,00,000/= from the respondent Corporation on 17-03-1993. However, admittedly disbursement was only made to the tune of Rs.33.00 lacs. The respondent - Corporation was the canalizing agency through which the State Government disburses subsidy. On

19th August, 1997 there was a one time settlement of the account of the petitioner as recorded in communication bearing No.GIIC/SEC/2885 dated 19th August, 1997. It was agreed between the parties that there was one time settlement of account for Rs.40,48,278/= which was to be repaid on the following terms and conditions :

" 1. 25% down payment i.e. Rs.10.12 lacs shall be made before 31/3/1997.

2. The balance amount shall be repayable in 18 monthly equal instalments of Rs.1,68,685 - each commencing from April, 1997 onwards with interest at prevailing lending rate. If any payment is delayed, penal interest at the rate of 4% shall on charged over and above prevailing lending rate.

3. The Company has to submit dated cheques for the monthly instalments as mentioned above for payment of balance 75% of UTS amount.

4. If the Cash Subsidy is received, the Corporation will adjust the same towards the outstandings of GIIC Ltd. "

3. As the petitioner paid off the amount as settled between the parties on 18th June, 1999, a certificate was issued by the respondent stating that the petitioner has settled term loan as per the settlement arrived at between the parties. The said certificate is available at Annexure 'C'.

4. It appears that thereafter the petitioner became entitled to additional State Cash Subsidy of Rs.20.41 lacs. On 28th March, 2000 the respondent intimated about such sanction, but after executing agreement as directed, the petitioner was informed on 25th/27th November, 2000 that the respondent had decided to adjust the amount of Rs.20.41 lacs due towards the disbursement of State Cash Subsidy against the outstanding amount of term loan account according to the Condition No.4 of the letter dated 19th August, 1997 sanctioning one time settlement of Rs.40.48 lacs. It was further stated that hence, no actual disbursement of subsidy shall be released.

5. The petitioner approached the respondent explaining that the Condition No.4 stipulates such adjustment till the point of time the payment was due

under the one time settlement and the amount of Rs.20.41 lacs was required to be released in favour of the petitioner. AS the respondent did not release the amount of Cash Subsidy, the petitioner has approached this Court seeking mandamus as regards the same.

6. Heard Mr.S.N.Soparkar, learned Sr. Counsel appearing on behalf of the petitioner and Mr.H.S.Munshaw, learned advocate appearing on behalf of the respondent corporation.

7. Mr.Munshaw invited attention to the affidavit in reply dated 17th June, 2002 and submitted that the respondent - Corporation by entering into one time settlement had sacrificed an amount of Rs.9,13,799/= plus interest thereon and hence was entitled to retain the amount of cash subsidy. It was submitted that the respondent was dealing with funds of the State i.e. of the public and the respondent - Corporation should not be compelled to make the payment merely because it had entered into one time settlement.

8. It is apparent that respondent - Corporation entered into a contract of sanctioning and disbursing term loan to the petitioner. On 19th August, 1997 when it had entered into one time settlement the said contract was re-written, i.e. a novatio was created. As can be seen from the Condition No.4 which is reproduced hereinbefore, it is apparent that it stipulates adjustment of cash subsidy against outstandings of the respondent - Corporation. Therefore, if on the date of sanction / disbursement if any amount was outstanding the respondent was definitely entitled to such withholding. However, the facts show otherwise as can be seen from the settlement certificate dated 18th June, 1999. Hence, the respondent Corporation could not have retained the amount of subsidy on the basis of the said condition. As regards the contention of the respondent having sacrificed an amount when it had entered into one time settlement it requires to be stated to be rejected. The respondent had entered into the said settlement after having considered all the relevant factors and it was a commercial decision without any riders. In these circumstances, the respondent cannot be heard to state that as the respondent had given up a certain sum while arriving at one time settlement, it was open today to retain the amount of subsidy which had been sanctioned in favour of the petitioner. The action of the respondent in retaining such a sum is not only illegal but could amount to criminal misappropriation. The respondent was merely disbursing agent of the State Government and it

could not have staked any lien over the said amount.

9. In view of the what is stated hereinbefore, this petition requires to be allowed. The respondent is directed to pay off the additional cash subsidy of Rs.20.41 lacs which has been illegally withheld. The respondent shall pay off the aforesaid sum as early as possible but not later then 31-07-2002.

10. The petition is accordingly allowed in terms as aforesaid. Rule made absolute to the aforesaid extent. There shall be no order as to costs.

Sd/-

(D.A.Mehta,J)

'Bhavesh'